

JUN 24 2009

Mr. Frederick KinKin
Vice President, Operations
Linde North America, Inc.
2389 Lincoln Ave.
Hayward, CA 94545

Re: CPF No. 5-2005-5002

Dear Mr. KinKin:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. The Final Order also finds that you have addressed the inadequacies in your procedures that were cited in the Notice of Amendment. This case is now closed. Your receipt of the Final Order constitutes service under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Enclosure

cc: Chris Hoidal, PE, Director, Western Region, PHMSA
Paul Koo, Regional Operations Manager, West Region, Linde North America, Inc.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED [7005 1160 0001 0046 9754]

**U.S. DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, D.C. 20590**

_____)	
In the Matter of)	
)	
Linde North America, Inc.,)	CPF No. 5-2005-5002
)	
Respondent.)	
_____)	

FINAL ORDER

On June 10, 2004, pursuant to 49 U.S.C. § 60117, a representative of the Pipeline and Hazardous Materials Safety Administration (PHMSA),¹ Office of Pipeline Safety (OPS) conducted an on-site pipeline safety inspection of the facilities and records of Linde North America² (Respondent) near Green River, Wyoming. Respondent transports carbon dioxide from the Green River Junction facility seven miles southwest to its facility north of Interstate 80 exit 72. There, the carbon dioxide is converted to gas and then delivered to its customers. As a result of the inspection, the Director, Western Region, OPS (Director), issued to Respondent, by letter dated March 4, 2005, a Notice of Probable Violation, Proposed Compliance Order, and Notice of Amendment (Notice).³ In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 199.101(a) and 199.202 and proposed ordering Respondent to take certain measures to correct the alleged violations. The Notice also proposed, in accordance with 49 C.F.R. § 190.237, that Respondent amend its Operating and Maintenance Procedures. In addition, the Notice contained warning items that Respondent had committed probable violations of 49 C. F. R. §§ 195.266, 195.310(b)(2) and (b) (9), 195.404(c)(3) and sections of Part 195 Subpart F and advised Respondent to take appropriate corrective action.

¹ Effective February 20, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA) succeeded the Research and Special Programs Administration as the agency responsible for regulating safety in pipeline transportation and hazardous materials transportation. See, section 108 of the Norman Y. Mineta Research and Special Programs Improvement Act (Public Law 108-426, 118 Stat. 2423-2429 (November 30, 2004)). See also, 70 Fed. Reg. 8299 (February 18, 2005) re delegating the pipeline safety authorities and functions to the PHMSA Administrator.

² The Notice was issued to BOC Gases, which was purchased by and is now known as Linde North America, Inc.

³ There were a few numerical typos in the Notice. However, Respondent received sufficient notice in that the citation was described within the Notice. Respondent's Response appears that it understood what the Notice indicates.

Respondent responded to the Notice by letter dated March 28, 2005.⁴ In a following correspondence, dated April 6, 2005 Respondent requested an extension. Subsequently, Western Region, OPS, received Respondent's supplemental responses (Response) on August 1, 2005. Respondent did not contest the allegations of violation and provided information concerning the corrective actions it has taken and submitted copies of its revised procedures. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the allegations in the Notice that it violated 49 C.F.R. Part 199, as follows:

Item 6: The Notice alleged that Respondent violated 49 C.F.R. § 199.101, which states:

49 C.F.R. § 199.101⁵ – Anti-drug Plan

- (a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT procedures. The plan must contain-
- (1) Methods and procedures for compliance with all requirements of this part, including the employee assistance program;
 - (2) The name and address of each laboratory that analyzes the specimens collected for drug testing;
 - (3) The name and address of the operator's medical review officer; and
 - (4) Procedures for notifying employees of the coverage and provisions of the plan.

At the time of inspection, Respondent was unable to produce an anti-drug plan that complied with 49 C.F.R. § 199.101. Accordingly, I find that Respondent violated 49 C.F.R. § 199.101(a)(1-4) by failing to have an anti-drug plan that complied with Part 199 or Part 40, the U.S. Department of Transportation Drug and Alcohol Procedures, at the time of inspection. Based on the OPS inspector's interview of the Site Manager during the June 2004 inspection, Respondent was in the process of acquiring the drug and alcohol plan required by Part 199. In one of its Response correspondence, Respondent submitted its Drug Testing Process Overview dated October 2004.

Item 7: Notice alleged that Respondent violated 49 C.F.R. § 199.202, which states:

49 C.F.R. § 199.202 -- Alcohol Misuse Plan

⁴ In Respondent's March 28, 2005 letter to Director, Western Region, Respondent acknowledged receipt of OPS' March 4, 2005 Notice and addressed the Notice. However, approximately a week and a half after sending the acknowledgment letter to PHMSA, Respondent sent a subsequent correspondence stating that it had only received the Notice on April 6, 2005.

⁵ The Notice sets forth the language of the proposed violation for 49 C.F.R. §199.101(a)(1-4). However, due to a typo, the language citation was attributed to 49 C.F.R. § 199.7(a). The Notice adequately provided notice of the alleged violation and Respondent addressed the alleged violation as set forth.

Each operator shall maintain and follow an alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in Part 40 of this title. The plan shall contain methods and procedures for compliance with all requirements of this subpart, including required testing, record keeping, reporting, education, and training elements.

At the time of inspection, Respondent was unable to produce an alcohol misuse plan that complied with 49 C.F.R. § 199.202. Accordingly, I find that Respondent violated 49 C.F.R. § 199.202 by failing to have an alcohol misuse plan that complies with Part 199 or Part 40, the DOT Procedures, at the time of inspection. Based on the OPS inspector's interview of the Site Manager during the June 2004 inspection, Respondent was in the process of acquiring the drug and alcohol plan required by Part 199. In one of its Response correspondence, Respondent submitted its Drug Testing Process Overview dated October 2004 and a memo to employees about the Alcohol and Drug Abuse Policy. The documents outline drug and alcohol testing procedures, how Respondent will deal with employees who test positive for drugs or alcohol, and how employees can learn more about Respondent's policies.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to Items 6 and 7 in the Notice for violations of 49 C.F.R. §§ 199.101 and 199.202.

Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under Chapter 601. Respondent developed an anti-drug and alcohol misuse plan and submitted information about the plans on August 11, 2005. The Director has advised that these plans appear to meet the requirements of the Proposed Compliance Order per the Notice.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

AMENDMENT OF PROCEDURES

The Notice alleged certain inadequacies in Respondent's Operations and Maintenance Manual and proposed to require amendment of Respondent's procedures to comply with the requirements of 49 C.F.R. § 195.402(c)(3) and the specified citations.

In its response Respondent submitted copies of its amended procedures, which the Director, has reviewed. Accordingly, based on the results of this review, I find that Respondent's original procedures as described in the Notice were inadequate to ensure safe operation of its pipeline system, but that Respondent has corrected the identified inadequacies. No need exists to issue an order directing amendment.

WARNING ITEMS

With respect to Items 1, 2a, 2b, and 5 (a-k), the Notice alleged probable violations of Part 195 but did not propose a civil penalty or compliance order for these items. Therefore, these are considered to be warning items. The warnings were for:

49 C.F.R. § 195.266(a-c) (Notice Item 1) — Respondent's alleged failure to have construction records describing the number of girth welds, including the number rejected and the disposition of each rejected weld; the amount location, and cover of each size pipe installed; and the location of any crossing of another pipeline;

49 C.F.R. § 195.310(b)(2) (Notice Item 2a) — Respondent's alleged failure to have pressure test equipment calibration records for the post-construction pressure test;

49 C.F.R. § 195.310(b)(9) (Notice Item 2b) — Respondent's alleged failure to account for elevation differences in the pipeline with the pressure test record of the post construction pressure test; and

49 C.F.R. § 195.404(c)(3) (Notice Item 5) — Respondent's alleged failure to perform and/or maintain records of activities required by the following sections of Subpart F:

- (a) 195.402(c)(12) – include procedures to establish and maintain liaison with fire, police, and other appropriate public officials;
- (b) 195.402(c)(13) – include procedures to review work performed by personnel and take corrective action;
- (c) 195.403(a) – establish and conduct training to instruct emergency response personnel;
- (d) 195.403(b)⁶ – review of personnel performance and emergency response program changes;
- (e) 195.403(c) – verification of supervisor knowledge of emergency response procedures;

⁶ See numerical notice footnoted above.

- (f) 195.412(a) – inspect surface conditions on or adjacent to pipeline rights of way at intervals not exceeding 3 weeks, but at least 26 times each calendar year;
- (g) 195.420(b) – inspect four mainline block valves and one blow-down valve at intervals not exceeding 7 ½ months, but at least twice each calendar year;
- (h) 195.428(a) – inspect two thermal relief valves at intervals not exceeding 15 months, but at least once each calendar year;
- (i) 195.440 – develop and implement a written continuing public education program;
- (j) 195.442(c)(1) – include in list of persons who normally engage in excavation activities in the area in damage prevention program; and
- (k) 195.442(c)(2) – notify public and excavators in vicinity of pipeline.

Respondent stated in its March 28, 2005 Response that it will take certain actions to address the cited items. Having considered such information, I find, pursuant to 49 C.F.R. § 190.205, that probable violations of Subpart F of 49 C.F.R. Part 195 (Notice Items 1, 2(a-b), and 5(a-k)) have occurred and Respondent is hereby advised to correct such conditions. If OPS finds a violation for any of these items in a subsequent inspection, Respondent may be subject to future enforcement action.

The terms and conditions of this Final Order are effective on receipt.

Jeffrey D. Wiese
Associate Administrator
for Pipeline Safety

Date Issued